

No. 87-107

Supreme Court, U.S.  
FILED

JUL 7 1988

JOSEPH E. SPANGL, JR.  
CLERK

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1988

BRENDA PATTERSON,

*Petitioner,*

v.

McLEAN CREDIT UNION,

*Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FOURTH CIRCUIT

**RESPONDENT'S OBJECTIONS TO MOTION OF  
THE AMERICAN BAR ASSOCIATION FOR  
LEAVE TO FILE A BRIEF AMICUS CURIAE**

ROGER S. KAPLAN  
281 Madison Avenue  
New York, New York 10016  
(212) 697-8200

H. LEE DAVIS, JR.  
115 West Third Street  
Winston-Salem, North Carolina 27101  
(919) 725-8385

*Counsel for Respondent*

TABLE OF CONTENTS

	<u>Page</u>
Respondent's Objections to Motion of the American Bar Association for Leave to File a Brief <u>Amicus Curiae</u> ....	2
Conclusion.....	9

In The  
Supreme Court Of The United States  
October Term, 1988

---

No. 87-107

---

BRENDA PATTERSON,  
Petitioner,  
v.  
MCLEAN CREDIT UNION,  
Respondent.

---

On Writ of Certiorari to the United  
States Court of Appeals for the  
Fourth Circuit

---

RESPONDENT'S OBJECTIONS TO MOTION OF  
THE AMERICAN BAR ASSOCIATION FOR  
LEAVE TO FILE A BRIEF AMICUS CURIAE

---

Respondent respectfully opposes  
the motion by the American Bar  
Association (ABA) for leave to file  
a brief as amicus curiae for the  
following reasons:

1. In its motion for leave to file a brief amicus curiae, the ABA describes itself as follows:

The ABA is a voluntary national organization of lawyers. Its more than 347,000 members come from every state and territory and represent a broad cross-section of the legal profession.

Because of the "broad cross-section of the legal profession" which comprises the membership of the ABA, and because of that membership's diverse interests and views, the ABA has instituted a thorough review procedure which must be followed before the ABA will authorize the filing in its name of a brief amicus curiae. Respondent has reason to believe that the full authorization procedure was not followed in this case, and therefore the brief now advanced under the name of the ABA

cannot accurately speak for the members of that organization.

2. The Policy and Procedures Handbook of the ABA sets forth the requirements and procedure for a particular section, committee or other entity of the ABA to obtain authorization from the ABA Board of Governors to file brief amicus curiae (pp. 79ff.). The pertinent aspect of those requirements provides that the formal application to the Board of Governors for authorization must include:

1. A list of sections, divisions, or committees which may have any interest in the issue presented, and a statement that a copy has been sent to each. Failure to provide these entities with adequate notice may result in denial of the application. If possible, these entities should be consulted and their positions ascertained prior to the

submission of the application. The application shall discuss what has been done in this respect and the position, if any, of the other entities. (p. 82).

3. Here, the filing of an amicus curiae brief has been urged by the ABA's Section on Individual Rights and Responsibilities. This section is generally identified as being comprised of attorneys who represent plaintiffs in civil rights related matters. Counsel for Respondent was informed by co-counsel for the ABA as amicus curiae that during the week of June 6, 1988, the ABA Board of Governors "took a position" that the decision in Runyon v. McCrary should not be overruled, and that, subsequently, a formal application for authorization for the brief was filed with the Board of Governors. That

application was still pending at the time Respondent's consent was sought. 1/

4. Despite the above quoted rules, we are informed that the views of the ABA Section of Labor and Employment Law were not solicited in conjunction with the instant application for authorization to file a brief amicus curiae. (Respondent also believes that the views of other interested sections may not have been solicited.) The Section of Labor and Employment Law undeniably has an interest in this

---

1/Co-counsel for the ABA as amicus curiae, Mitchell F. Dolin, has subsequently asserted that the Board of Governors did not "act" until on or about June 15 or 16, 1988, the date of a telephone conversation with counsel for Respondent. Nevertheless, it appears that the application for authorization still was pending at that time.

case, since its members represent clients which are frequently defendants in suits brought under 42 U.S.C. §1981. Nevertheless, when counsel for Respondent requested a copy of the application which had been filed, in order to ascertain whether the ABA's procedures had been followed, the request was denied.

5. Because the authorization procedures of the ABA were not followed in that at least one interested entity of the ABA was not consulted with respect to the proposed brief amicus curiae, and because of the apparent haste in which authorization was sought, a serious question exists whether the position in the proposed brief truly reflects the views of the interested members.

6. A nationwide organization purporting to speak for the legal profession as a whole has a special duty to take care that procedures designed to assure adequate notice to interested members, an opportunity to be heard and a deliberate, reasoned decision on action proposed in the name of the ABA -- i.e., due process -- are followed in letter and spirit. This is particularly true in cases before the Supreme Court involving issues of significant public interest, where many members may feel that the ABA should take a contrary position, or perhaps, no position at all.

7. For the reasons stated herein, Respondent has withheld consent to the ABA's request to file a brief as amicus curiae, and now



opposes its motion for leave to do  
so.

Respectfully submitted,

Roger S. Kaplan

JACKSON, LEWIS,  
SCHNITZER & KRUPMAN  
261 Madison Avenue  
New York, New York 10016  
(212) 697-8200

H. Lee Davis, Jr.

MITCHINS, TYNDALL,  
DOUGHTON & MOORE  
115 West Third Street  
Winston-Salem, N.C. 27101  
(919) 725-8385